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7 THE CRISAFI FLP,
8 Plaintiff,
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10 v.
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12 VICTOR GARCIA, Does 1-10, inclusive
13 Defendant.

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5 UNITED STATES DISTRICT COURT
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7 NORTHERN DISTRICT OF CALIFORNIA

8 Case No. [16-cv-02916-JCS](#)
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28 **REPORT AND RECOMMENDATION
REGARDING MOTION TO REMAND
TO STATE COURT**

29 Re: Dkt. No. 3

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31 **I. INTRODUCTION**

32 On March 25, 2016, Plaintiff The Crisafi FLP (“Crisafi”) brought an unlawful detainer action
33 in Alameda County Superior Court against Defendant Victor Garcia. Garcia, proceeding pro se,
34 removed the case to this Court on May 31, 2016. Crisafi has filed a Motion to Remand (“Motion”)
35 asking the Court to remand the action to state court on the grounds that there is no federal jurisdiction,
36 either under 28 U.S.C. § 1331 (federal question) or § 1332 (diversity), and the removal was untimely
37 under 28 U.S.C. 1447(c). Crisalfi filed a consent to magistrate jurisdiction under 28 U.S.C. § 636(c)
38 but Garcia has neither consented to magistrate jurisdiction nor requested reassignment and the deadline
39 to do so has passed. Garcia also did not file an Opposition to the Motion by the June 16, 2016
40 deadline. Accordingly, the Court will reassign this case to a United States district judge with the
41 recommendation that the Court GRANT Crisalfi’s Motion and remand this action to the California
42 Superior Court for Alameda County. The motion hearing set for **July 8, 2016 at 9:30 a.m. is vacated.**

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44 **II. ANALYSIS**

45 Federal courts have limited subject matter jurisdiction, and may only hear cases falling within
46 their jurisdiction. A defendant may remove a civil action filed in state court if the action could have
47 been filed originally in federal court. 28 U.S.C. § 1441. The removal statutes are construed
48 restrictively so as to limit removal jurisdiction. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100,

1 108–09 (1941). The Ninth Circuit recognizes a “strong presumption against removal.” *Gaus v. Miles*,
2 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (internal quotations omitted). Any doubts as to removability
3 should be resolved in favor of remand. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089,
4 1090 (9th Cir. 2003). The defendant bears the burden of showing that removal is proper. *Valdez v.*
5 *Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

6 Garcia’s Notice of Removal invokes federal question jurisdiction. *See* Notice of Removal ¶ 6.¹
7 Federal question jurisdiction under § 1331 encompasses civil actions that arise under the Constitution,
8 laws, or treaties of the United States. *See* 28 U.S.C. § 1331. “A case ‘arises under’ federal law either
9 where federal law creates the cause of action or ‘where the vindication of a right under state law
10 necessarily turns on some construction of federal law.’” *Republican Party of Guam v. Gutierrez*, 277
11 F.3d 1086, 1088 (9th Cir. 2002) (citations omitted). “The presence or absence of federal-question
12 jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction
13 exists only when a federal question is presented on the face of the plaintiff’s properly pleaded
14 complaint.” *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002) (quoting
15 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)). A federal question must arise from the
16 complaint—it is “settled law that a case may not be removed to federal court on the basis of a federal
17 defense.” *Caterpillar*, 482 U.S. at 393.

18 Here, the Complaint alleges only violations of California state law. Defendant’s Notice of
19 Removal states that a “[f]ederal question exists because Defendant’s Answer, a pleading depend [sic]
20 on the determination of Defendant’s rights and Plaintiff’s duties under federal law.” Notice of
21 Removal ¶ 10. Even if that is so, a federal defense presented in the Answer provides no basis for
22 removal. *See Caterpillar*, 482 U.S. at 393. The undersigned therefore finds no basis for federal
23 jurisdiction, and recommends that the case be remanded.

24 Further, Garcia’s notice of removal is untimely. “The notice of removal of a civil action or
25 proceeding shall be filed within thirty days after the receipt by the defendant, through service or
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27 ¹ Garcia has not invoked federal diversity jurisdiction under 28 U.S.C. § 1332, and there is no
28 indication that diversity jurisdiction applies. All parties appear to be citizens of California.
Further, Garcia does not allege that the amount in controversy exceeds \$75,000. Crisafi alleges
past rent due amounting to only \$4,864.00. Notice of Removal, Exhibit A, p. 3.

1 otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or
2 proceeding is based, or within thirty days after the service of summons upon the defendant if such
3 initial pleading has then been filed in court and is not required to be served on the defendant,
4 whichever period is shorter.” 28 U.S.C. § 1446(b). Defects in removal procedures are waived unless
5 challenged by timely motion for remand in the federal court, filed within thirty days after the filing of
6 the notice of removal in federal court. 28 U.S.C. § 1447(c); *Maniar v. FDIC*, 979 F.2d 782, 785 (9th
7 Cir. 1992) (courts may not remand *sua sponte* for procedural defects, including defects in removal
8 procedures, after thirty day limit). Plaintiff timely challenged Garcia’s motion for remand on this
9 ground. *See Motion for Remand* (filed June 2, 2016). Garcia was served on March 28, 2016. His
10 notice of removal was filed May 31, 2016, falling outside the thirty days allotted him. *See Notice of*
11 *Removal*. Garcia’s notice of removal is therefore untimely.

12 **III. CONCLUSION**

13 For the reasons stated above, the undersigned recommends that Motion be GRANTED and that
14 this action be REMANDED to the California Superior Court for Alameda County. The case will be
15 reassigned to a United States district judge for action on this recommendation and any further
16 proceedings. Any party may file objections to this recommendation no later than fourteen days after
17 being served with a copy of this Report.

18 Garcia, who is unrepresented, is encouraged to consult with the Federal Pro Bono Project’s
19 Legal Help Center in either of the Oakland or San Francisco federal courthouses for assistance. The
20 San Francisco Legal Help Center office is located in Room 2796 on the 15th floor at 450 Golden Gate
21 Avenue, San Francisco, CA 94102. The Oakland office is located in Room 470-S on the 4th floor at
22 1301 Clay Street, Oakland, CA 94612. Appointments can be made by calling (415) 782-8982 or
23 signing up in the appointment book located outside either office. Lawyers at the Legal Help Center can
24 provide basic assistance to parties representing themselves but cannot provide legal representation.

25 **IT IS SO ORDERED**

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27 Dated: June 20, 2016


JOSEPH C. SPERO
Chief Magistrate Judge